

HB e 2:12-cv-04020-HB Document 1 Filed 07/13/12 Page 1 of 9  
CIVIL COVER SHEET 1d-CV-4020

*4 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided in count one. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating all docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

<b>(a) PLAINTIFFS</b> Speaking Truth to Power		<b>DEFENDANTS</b> United States Strategic Command, United States Department of Defense, United States Global Strike Command	
<b>(b) County of Residence of First Listed Plaintiff</b> <b>Philadelphia</b> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i>		County of Residence of First Listed Defendant <i>(IN U.S. PLAINTIFF CASES ONLY)</i> NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.	
<b>(c) Attorney's Firm Name, Address, and Telephone Number</b> Jules Zacher, Esquire 1501 Walnut Street, Suite 707 Philadelphia, PA 19102 (215) 988-0160		Attorneys <i>(if known)</i>	
<b>II. BASIS OF JURISDICTION</b> <i>(Place an "X" in One Box Only)</i>		<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> <i>(Place an "X" in One Box for Plaintiff and One Box for Defendants)</i>	
<input checked="" type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i>	Citizen of This State <input checked="" type="checkbox"/> PTF <input type="checkbox"/> DEF	Incorporated or Principal Place of Business In This State <input type="checkbox"/> PTF <input checked="" type="checkbox"/> DEF
<input checked="" type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i>	Citizen of Another State <input type="checkbox"/> PTF <input checked="" type="checkbox"/> DEF	Incorporated and Principal Place of Business In Another State <input type="checkbox"/> PTF <input checked="" type="checkbox"/> DEF
		Citizen or Subject of a Foreign Country <input type="checkbox"/> PTF <input checked="" type="checkbox"/> DEF	Foreign Nation <input type="checkbox"/> PTF <input checked="" type="checkbox"/> DEF
<b>V. NATURE OF SUIT</b> <i>(Place an "X" in One Box Only)</i>		<b>CONTRACT</b>	
		<b>TORTS</b>	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 96 Franchise		<b>PERSONAL INJURY</b>	
		<b>PERSONAL INJURY</b>	
<input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability		<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	
		<b>PERSONAL PROPERTY</b>	
<input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice		<input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	
<b>REAL PROPERTY</b>		<b>CIVIL RIGHTS</b>	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Eviction <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing Accommodations <input type="checkbox"/> 445 Amer. w/ Disabilities - Employment <input type="checkbox"/> 446 Amer. w/ Disabilities - Other <input type="checkbox"/> 448 Education	
		<b>PRISONER PETITIONS</b>	
		<input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	
<b>ORIGIN</b> <input type="checkbox"/> 1 Original Proceeding		<b>Removal from State Court</b> <input type="checkbox"/> 2 <b>Remanded from Appellate Court</b> <input type="checkbox"/> 3 <b>Reinstated or Reopened</b> <input type="checkbox"/> 4 <b>Transferred from another district (specify)</b> <input type="checkbox"/> 5 <b>Multidistrict Litigation</b> <input type="checkbox"/> 6	
<b>I. CAUSE OF ACTION</b>		Cite the U.S. Civil Statute under which you are filing <i>(Do not cite jurisdictional statutes unless diversity)</i> : 5 USC 552 Brief description of cause: Freedom of Information Request	
<b>II. REQUESTED IN COMPLAINT:</b>		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	<b>DEMAND \$</b> CHECK YES only if demanded in complaint <b>JURY DEMAND:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>III. RELATED CASE(S) IF ANY</b>		<i>(See instructions)</i> <b>JUDGE</b> <b>DOCKET NUMBER</b>	
<b>DATE</b> 7/13/2012		<b>SIGNATURE OF ATTORNEY OF RECORD</b> 	
<b>FOR OFFICE USE ONLY</b>			

DATE:

SIGNATURE OF A FIDUCIARY OR RECORD

**DOCKET NUMBER**

JURY DEMAND:  Yes  No

07/13/2012

174

- 3 - 2012

**FOR OFFICE USE ONLY**

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FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 1601 Walnut Street Suite 707 Phila Pa 19101

Address of Defendant: Washington DC

Place of Accident, Incident or Transaction:

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes

No

Does this case involve multidistrict litigation possibilities?

Yes

No

RELATED CASE, IF ANY:

Case Number: \_\_\_\_\_ Judge \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?  
Yes  No
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?  
Yes  No
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?  
Yes  No
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?  
Yes  No

CIVIL: (Place  in ONE CATEGORY ONLY)

A. Federal Question Cases:

- Indemnity Contract, Marine Contract, and All Other Contracts
- FELA
- Jones Act-Personal Injury
- Antitrust
- Patent
- Labor-Management Relations
- Civil Rights
- Habeas Corpus
- Securities Act(s) Cases
- Social Security Review Cases
- All other Federal Question Cases  
(Please specify) F.O.I.A

B. Diversity Jurisdiction Cases:

- Insurance Contract and Other Contracts
- Airplane Personal Injury
- Assault, Defamation
- Marine Personal Injury
- Motor Vehicle Personal Injury
- Other Personal Injury (Please specify)  
(Please specify) \_\_\_\_\_
- Products Liability
- Products Liability — Asbestos
- All other Diversity Cases

I, \_\_\_\_\_, counsel of record do hereby certify:

Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

Relief other than monetary damages is sought.

DATE: \_\_\_\_\_

Attorney-at-Law

Attorney ID #

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 7/13/12

Jules Reider  
Attorney-at-Law

7/13/2012

20575

Attorney ID #

HB

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

CIVIL ACTION

v.

19 NO. 4020

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.)
- (f) Standard Management – Cases that do not fall into any one of the other tracks.

7/13/12  
Date

Zackary Carlson  
Attorney-at-law

  
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E-Mail Address

**HB**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

**12 4020**

Civil Action No. \_\_\_\_\_

Speaking Truth To Power.

Plaintiffs,

v.

United States Strategic Command, United States  
Department of Defense, United States Global Strike  
Command

Defendants.

**COMPLAINT**

1. This is a lawsuit seeking the release of records related to the Launch Facilities Down(LFD) Incident of October 23, 2010 at F.E. Warren Air Force Base in Wyoming in which 50 Intercontinental ballistic missiles (ICBM) were unable to communicate with their human controllers for approximately 45 minutes.
2. This action is brought under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, seeking appropriate relief, the immediate processing and release of records sought by Plaintiff Speaking Truth to Power(STTP)from Defendants; United States Strategic Command(USSTRATCOM), United States Department of Defense, and United States Global Strike Command(USGSC).

3. The Request, dated December 13, 2011, sought release of records related to the Launch Facilities Down(LFD) Incident of October 23, 2010 at F.E. Warren Air Force Base in Wyoming in which 50 Intercontinental ballistic missiles (ICBM) were unable to communicate with their human controllers for approximately 45 minutes..
4. The Request was directed to USSTRATCOM.
5. On May 29,2012 an identical FOIA Request was submitted to United States Global Strike Command.
6. Defendants have yet to release documentation relating to the LFD incident of October 23, 2010.
7. The Requests relates to a topic vital importance: the control of our nation's nuclear arsenal could not be more important or vital to the health and well-being of the citizens of the United States. Therefore the citizens of the US have the right to know how such an incident did occur.

#### **Jurisdiction and Venue**

8. This Court has subject matter jurisdiction and personal jurisdiction over this action pursuant to 5 U.S.C. §552(a)(4)(B), (a)(6)(E)(iii), 28 U.S.C. §1331, and 5 U.S.C. §§ 701-706.
9. Venue is premised on the place of business of Speaking Truth to Power (STTP) in this district under 5 U.S.C. § 552(a)(4)(B).

**Parties**

10. Plaintiff Speaking Truth to Power is a public policy research and information organization. STTP in conjunction with Global Zero and the Center for Arms Control and Non-Proliferation will make this information freely available to thousands of citizens through varied publications and across several websites including; [www.speakingtruthtopower.org](http://www.speakingtruthtopower.org), [www.centreforarmscontrolandnonproliferation.org](http://www.centreforarmscontrolandnonproliferation.org) and [www.globalzero.org](http://www.globalzero.org). Obtaining information about governmental activity, analyzing that information, and widely publishing and disseminating it to the press and the public is a critical component of STTP's, Global Zero's, and The Center for Arms Control and Non-Proliferation's work.
11. Defendant USSTRATCOM conducts global operations in coordination with other Combatant Commands, Services, and appropriate U.S. Government agencies to deter and detect strategic attacks against the U.S. and its allies, and is prepared to defend the nation as directed.. USSTRATCOM is a governmental agency within the meaning of 5 U.S.C. § 552 (f)(1).
12. Defendant Global Strike Command is a command with in the United States Air Force whose job it is to develop and provide combat-ready forces for nuclear deterrence and global strike operations, and to support the President of the United States and combatant commanders.
13. Defendant Department of Defense is the Executive Department of the United States Government charged with coordinating and supervising all agencies of the government concerned directly with the national security of the Unites States and its armed forces. The Department of Defensc oversees both STRATCOM and USGSC

### **Factual Background**

14. On October 23, 2010 at F.E. Warren Air Force Base in Wyoming 50 Intercontinental ballistic missiles (ICBM) were unable to communicate with their human controllers for approximately 45 minutes.
15. On December 13, 2011, STTP submitted a FOIA request for the LFD incident of October 23, 2010 to Strategic Command.
16. On December 16, 2011, Defendant Strategic Command denied Plaintiffs request for expedited processing as well as acknowledged receipt of the FOIA request dated December 13, 2011.
17. On December 27, 2011, Defendant Strategic Command requested from Plaintiff an extension to February 1, 2012 for the processing of records.
18. On January 1, 2012 Plaintiff accepted Defendant Strategic Command's deadline of February 1, 2012 for processing of FOIA request.
19. On February 2, 2012, Defendant Strategic Command contacted Plaintiff informing it that due to the number of pages and complexity of the request, Defendant Strategic Command was still processing the request and planned to have the request completed by the end of February, 2012. Defendant Strategic Command also informed Plaintiff that it had spoken with Defendant Global Strike Command, and Defendant Strategic Command was waiting on Defendant Global Strike Command to send them any responsive documents, and then combine the documents from both Defendants and do a final review.
20. On March 22, 2012, Defendant Strategic Command informed Plaintiff that Defendant Strategic Command was waiting on a document from Defendant Air Force Global Strike

Command to ensure that Defendant Strategic Command's documents were properly classified and the unclassified portions can be released.

21. On May 2, 2012, Defendant Strategic Command informed Plaintiff that Defendant Strategic Command's records should be available by June 1, 2012. They also informed Plaintiff that Defendant Strategic Command had again referred Plaintiff's FOIA Request dated December 13, 2011 to Defendant Global Strike Command as they may have documents responsive to Plaintiff's FOIA Request.
22. On May 24, 2012, Defendant Strategic Command informed Plaintiff that records were being reviewed and should be available in "about a week". Defendant Strategic Command also stated that Defendant Global Strike Command was, "getting closer to a release".
23. As of the date of this filing, over 7 months since initial FOIA request, Defendant Strategic Command still has released no documents on the LFD down incident of October 23, 2010 pursuant to Plaintiff's FOIA request.
24. There has been no administrative appeal by Plaintiff as neither Defendant has never officially denied Plaintiff's FOIA request dated December 13, 2011.
25. While Plaintiff does of course understand the complexity of their FOIA request, and the volume of requests that Defendants receive, Plaintiff feels that it has been more than cooperative in trying to accommodate Defendants numerous time extensions and that at this point feels that Filing of Suit is appropriate.
26. On May 29, 2012 STTP submitted the same FOIA request for the LFD incident of October 23, 2010 to Defendant United States Global Strike Command.

27. On June 6, 2012 Defendant Global Strike Command acknowledged receipt of the FOIA Request, requesting an extension of time to respond until July 24, 2012. Nevertheless, as seen in paragraph 19, Defendant Global Strike Command was made aware of Plaintiff's FOIA Request on February 2, 2012, and has had well over 5 months to produce the requested documents.

28. No contact has been made with Defendant Global Strike Command since June 6, 2012.

### **Causes of Action**

29. Defendants' failure to make a reasonable effort to search for records sought by Request violates the FOIA, 5 U.S.C. § 552(a)(3).

30. Defendants' failure to promptly make available the records sought by the Request violates the FOIA, U.S.C. § 552(a)(3)(A).

### **Prayer for Relief**

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Order Defendants immediately to produce all records responsive to the Request;
- B. Enjoin Defendants from charging Plaintiff search, review, or duplication fees for the processing of the Request;
- C. Award Plaintiff their costs and reasonable attorney's fees incurred in this action; and
- D. Grant such other relief as the Court deem just and proper.